

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LUIS DANIEL RIVERA PEREZ
Plaintiff
vs
UNITED STATES OF AMERICA
Defendant

CIVIL 19-1867CCC
(Related Cr. 12-0192-15CCC)

OPINION AND ORDER

Before the Court is petitioner's Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 (**d.e. 1**) filed September 13, 2019. Petitioner seeks relief from his sentence in Criminal 12-0192-15(CCC) on the basis of United States v. Davis, 139 U.S. 2319 (2019). The United States filed a Response (d.e. 6) on December 16, 2019, arguing that the motion should be denied because Davis is inapposite.

Having reviewed the above filings as well as Criminal 12-0192-15, the Court finds that petitioner is not entitled to relief. Davis held that the residual clause found at 18 U.S.C. § 924(c)(3)(B), which defines a "crime of violence," is unconstitutionally vague. Petitioner plead guilty to violations of 21 U.S.C. § 846, 841(a)(1) and 860. As petitioner was not subject to 18 U.S.C. § 924(c)(3)(B), – or to any similar residual clause – Davis is inapplicable.

For the reasons stated, petitioner's Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 (**d.e. 1**) is DENIED. Judgment shall be entered accordingly.

CERTIFICATE OF APPEALABILITY

The Court hereby ORDERS that no certificate of appealability shall be issued as petitioner failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2).

SO ORDERED.

In San Juan, Puerto Rico this 28th day of February, 2020.

S/GUSTAVO A. GELPÍ
Chief United States District Judge